

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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PETER WASKO,

Plaintiff,

vs.

Civ. No. 03-910 BB/WDS

JOHNNY GONZALES,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Plaintiff's Motion for Chief Judge to Enforce Recusal of Judge, filed November 17, 2003, [Doc. No. 15]. The Court finds that the motion is not well-taken and will be denied.

Plaintiff's motion requests that the chief judge force the trial judge to recuse himself from Plaintiff's case on the grounds that the trial judge's impartiality might reasonably be questioned. As grounds for this motion, Plaintiff asserts that the trial judge improperly requested that Plaintiff's case be assigned to him rather than follow the Court's random judge-assignment procedure. Plaintiff contends that this alleged behavior violates a number of provisions of the New Mexico Code of Judicial Conduct.¹

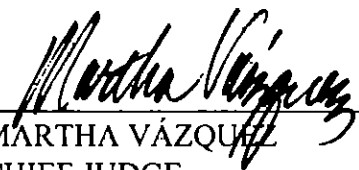
¹ Plaintiff also alleges that failing to comply with the Court's case-assignment process violates the Fourteenth Amendment and 42 U.S.C. § 1983. Plaintiff, however, does not provide any support for these assertions and his allegations do not appear to rise to the level of a constitutional violation.

The New Mexico Code of Judicial Conduct, which applies to New Mexico state courts, provides no basis for a claim of misconduct against a federal judge. The Court, however, construing a *pro se* plaintiff's motions liberally, will consider Plaintiff's motion as a complaint of judicial misconduct under 28 U.S.C. § 351 *et seq.*

Sections 351 to 364 of Title 28 of the United States Code provide a means for any person to complain about a federal judge who the person believes "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a). Complaints of judicial misconduct must be filed in accordance with the Tenth Circuit's Rules Governing Complaints of Judicial Misconduct and Disability. Pursuant to the Rules Governing Complaints of Judicial Misconduct and Disability, each complaint of judicial misconduct is referred first to the chief judge of the circuit who decides whether the complaint raises an issue that should be investigated. Plaintiff's complaint has been improperly filed with the chief judge of the district court, who has no authority to consider complaints of judicial misconduct.

It is therefore ordered that Plaintiff's Motion for Chief Judge to Enforce Recusal of Judge, filed November 17, 2003, [**Doc. No. 15**] is hereby **DENIED**.

Dated this 29th day of December, 2003.


MARTHA VÁZQUEZ
CHIEF JUDGE
U. S. DISTRICT COURT